

<sup>3</sup> The Board notes that, following the June 28, 2018 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board

## **ISSUES**

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 31, 2017, as she no longer had residuals or disability causally related to her accepted March 16, 2016 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after May 31, 2017 due to the accepted March 31, 2017 employment injury.

## **FACTUAL HISTORY**

On March 24, 2016 appellant, then a 42-year-old painter leader, filed a traumatic injury claim (Form CA-1) alleging that on March 16, 2016 she injured her right forearm while in the performance of duty.<sup>4</sup> On April 27, 2016 OWCP accepted her claim for right forearm strains. It paid her continuation of pay, followed by wage-loss compensation for temporary total disability. Appellant briefly resumed work in November 2016, but stopped work again.

On December 6, 2016 appellant underwent OWCP-authorized surgery to excise a mass (lipoma) from her right forearm, performed by Dr. Arthur W. Wardell, a Board-certified orthopedic surgeon. Following appellant's surgery, OWCP paid her wage-loss compensation on the supplemental rolls.

On March 3, 2017 OWCP referred appellant to Dr. James Schwartz, a Board-certified orthopedic surgeon, for a second opinion examination to determine her disability status and ability to return to work. It provided Dr. Schwartz with a statement of accepted facts (SOAF) dated February 24, 2017, which noted that her claim had been accepted for strains of "both forearms," that she had a mass excised from her right forearm followed by physical therapy, and that she had returned to work on November 22, 2016. In a report dated March 18, 2017, Dr. Schwartz concluded that there were no diagnoses from appellant's accepted March 16, 2016 employment injury and that her physical examination was entirely non-physiologic. He found that appellant's employment injury had resolved without residuals and that she, therefore, had no continuing disability. Dr. Schwartz indicated that appellant required no further medical treatment and she could resume full-time work without restrictions.

By decision dated May 31, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that appellant's employment injury had resolved without residuals or continuing disability.<sup>5</sup> It based the decision on the March 18, 2017 opinion of Dr. Schwartz.

Following the May 31, 2017 termination decision, OWCP received additional medical evidence including June 2017 physical therapy treatment records and a June 8, 2017 attending physician's report (Form CA-20) from Dr. Wardell, who diagnosed right forearm flexor pronator

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for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

<sup>4</sup> Appellant attributed her injury to lifting, carrying, and loading/unloading nuclear vacuum equipment.

<sup>5</sup> OWCP had provided appellant 30-days advanced notice of its proposed termination of FECA benefits.

tear and right elbow median neuropathy. Dr. Wardell advised that appellant was able to resume her regular full-duty work.

Effective June 9, 2017, appellant resumed full-time, full-duty work without restrictions.

On May 31, 2018 appellant timely requested reconsideration of OWCP's May 31, 2017 termination decision. With her request, she submitted additional reports from Dr. Wardell dated August 8, September 11, and October 9, 2017. The reports referenced a June 22, 2017 cervical injury under OWCP File No. xxxxxx981, as well as appellant's March 16, 2016 employment injury. Appellant also provided documents relevant to File No. xxxxxx981, including an April 11, 2018 decision accepting the claim for temporary aggravation of cervical radiculopathy.

In an accompanying May 30, 2018 statement, appellant requested that OWCP administratively combine the current case record, File No. xxxxxx322, with her traumatic cervical injury claim under File No. xxxxxx981, asserting that the later injury was a recurrence of the present claim.

By decision dated June 28, 2018, OWCP denied modification of its May 31, 2017 termination decision. It explained that it had reviewed appellant's May 30, 2018 statement, but found that Dr. Swartz' second opinion carried the weight of the medical evidence. OWCP noted that it "received no further medical evidence in support of the case."

### **LEGAL PRECEDENT -- ISSUE 1**

According to FECA,<sup>6</sup> once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.<sup>7</sup> OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>8</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>9</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>10</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>11</sup>

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>8</sup> *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>9</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>10</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>11</sup> *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 31, 2017, as she no longer had residuals or disability causally related to her accepted employment injury.

OWCP accepted appellant's claim for right forearm strains. Following a December 6, 2016 OWCP-authorized surgical procedure on March 3, 2017, OWCP referred appellant to Dr. Schwartz for a second opinion examination to determine her disability status and ability to return to work. In a report dated March 18, 2017, Dr. Schwartz concluded that there were no diagnoses for appellant's accepted employment injury of March 16, 2016 and that her physical examination was entirely non-physiologic. He opined that appellant's employment injury had resolved without residuals and that she, therefore, had no continuing disability. Dr. Schwartz found that appellant required no further medical treatment and she could resume full-time work without restrictions. He accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions about appellant's condition which comported with his findings.

The Board thus finds that Dr. Schwartz' opinion is sufficiently well rationalized and based on a proper factual and medical history such that his opinion is entitled to the weight of the medical evidence, establishing that appellant had no ongoing employment-related residuals or disability.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Once OWCP properly terminates a claimant's compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date, causally related to the accepted injury.<sup>13</sup> To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that the case is not in posture for decision.

OWCP failed to consider evidence it had received following its May 31, 2017 decision, which appellant had submitted in support of her request for reconsideration. As Board decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.<sup>15</sup> As set forth above, OWCP noted in its

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<sup>12</sup> *K.S.*, Docket No. 19-0082 (issued July 29, 2019); *see also R.R.*, *supra* note 9.

<sup>13</sup> *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *J.R.*, Docket No. 17-1352 (issued August 13, 2018).

<sup>14</sup> *Id.*

<sup>15</sup> *See L.T.*, Docket No. 19-0145 (issued June 3, 2019); *William A. Couch*, 41 ECAB 548 (1990).

June 28, 2018 decision that it had “received no further medical evidence in support of the case” when, in fact, it had received several additional reports from Dr. Wardell in support of appellant’s May 31, 2018 request for reconsideration.

Consequently, the Board must set aside the June 28, 2018 decision as OWCP did not fully consider the evidence appellant submitted with her May 31, 2018 request for reconsideration.

### **CONCLUSION**

The Board finds that OWCP has met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective May 31, 2017, as she no longer had residuals or disability causally related to her accepted employment injury. The Board further finds that the case is not in posture for decision with regard to whether appellant has met her burden of proof to establish continuing employment-related disability or residuals due to the accepted employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 28, 2018 decision of the Office of Workers’ Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 24, 2020  
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge  
Employees’ Compensation Appeals Board

Janice B. Askin, Judge  
Employees’ Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees’ Compensation Appeals Board